

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4713 of 2015
& M.P.No.1 of 2015

P.Shanmugam

... Petitioner

Vs.

A/M.Gangadareswarar Temple
having office at A/M.Gangadareswarar Temple
No.131, Gangadareswarar Koil St.,
Repd.by its Executive Officer
Purasawalkam, Chennai 84

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India,
against the order and decree in I.A.No.9699 of 2015 in O.S.No.1483
of 2006 dated 9.9.2015 on the file of the XVI Assistant Judge, City
Civil Court, Chennai.

For Petitioner : Mr.P.Gopalan

ORDER

The petitioner has come forward with the above Civil Revision
Petition challenging the order passed in I.A.No.9699 of 2015 in
O.S.No.1483 of 2006 dated 9.9.2015 on the file of the XVI Assistant
Judge, City Civil Court, Chennai, for allowing the application seeking

appointment of Advocate Commissioner to note down the physical features of the suit schedule property.

2. The learned counsel appearing for the petitioner would submit that the respondent as plaintiff filed a suit for evicting and delivering the vacant possession of the suit schedule property and also for permanent injunction, mandatory injunction and for a direction to pay a sum of Rs.49,110/- towards past arrears for the past three years commencing from January 2003.

3. The Revision petitioner herein as defendant in the suit filed written statement and contested the suit. During trial, issues were framed and plaintiff side evidence over.

4. On the side of the defendant, proof affidavit was filed. When the matter was posted for cross-examination of D.W.1, the respondent herein/plaintiff filed application in I.A.No.9699 of 2015 for appointment of Advocate Commissioner to note down the physical features of the suit schedule property and submit a report under Order 26 Rule IX r/w.Section 75 of Code of Civil Procedure. In the said petition, counter affidavit was filed by the present

Revision Petitioner as defendant stating that in the suit for recovery of vacant possession of the property in entirety, there is no scope for appointment of Advocate Commissioner to note down the physical features of the suit property.

5. After hearing both sides, the trial court allowed the application in I.A.No.9699 of 2015, holding that the improvement made by the defendant, if any, could be established by appointing Advocate Commissioner.

6. The learned counsel appearing for the Revision Petitioner would submit the Revision Petitioner/defendant is a tenant since 1975 in respect of suit land with a permission to put up superstructure in the leasehold land and accordingly, building constructed by him in the suit property and he is the owner of the superstructure and hence, there is no necessity to appoint an Advocate Commissioner and find out the physical features and this aspect has not been considered by the trial court. He further contended that the trial court has not assigned any reason for appointing Advocate Commissioner in the application in I.A.No.9699 of 2015. Raising the above contentions, the learned counsel prayed

for setting aside the order dated 09.09.2015 in I.A.No.9699 of 2015 in O.S.No.1483 of 2006.

7. I have considered the submissions made by the learned counsel for the Revision Petitioner and perused the typed set of papers. In view of the contentions raised in this Revision Petition and on hearing the arguments of the learned counsel for the Revision Petitioner in length, notice to respondent is dispensed with and present order is passed.

8. The respondent herein as Plaintiff filed suit in O.S.No.1483 of 2006 before the City Civil Court, Chennai praying for the following reliefs against the revision petitioner herein as defendant:-

“(a) directing the defendant to quit and deliver the vacant possession of the suit schedule property after removing the superstructure thereon;

(b) permanent injunction restraining the defendant, his men, agents or assignees or any other person claiming under him from putting up further construction in the schedule mentioned property;

(c) mandatory injunction to remove the unauthorised construction put up by the defendant in the schedule property;

(d) direct the defendant to pay a sum of Rs.49,110/- towards past arrears for the past three years commencing from January, 2003;

(e) future damages at the rates of Rs.100/- per day for the use and occupation of the suit property from the date of plaint to till the date of handing over of the possession. "

In paragraphs 5, 6 and 7 of the plaint, it is stated by the plaintiff that the defendant is trying to demolish the front portion of the existing superstructure and trying to put up a pucca construction without the consent and concurrence of the plaintiff temple/landlord; even though the Executive Officer of the plaintiff temple orally instructed the defendant to stop the construction, the defendant had not heeded to oral demands and as such notice dated 03.01.2006 was issued and by letter dated 04.01.2006, the Executive Officer of the plaintiff temple intimated the Assistant Engineer, Chennai Corporation regarding the unauthorised construction of the defendant.

9. Before the trial court, the defendant filed written statement stating that the allegation of the plaintiff in paragraph 4 of the plaint that he has sub-let the premises to third party unauthorisedly is

baseless and untrue. It is further averred that the building is not exempted under Tamil Nadu Buildings (Lease and Rent) Control Act.

10. Admittedly, in the suit, plaintiff side evidence is over. During cross-examination of D.W.1, application in I.A.No.9699 of 2015 has been filed. On a perusal of the typed set of papers, it is seen that the revision petitioner herein/defendant has put up unauthorised construction without consent of the landlord/temple/plaintiff and further let out the leased land to third party to find out whether there is any improvement or unauthorised construction in the leased land and thus, the trial court has rightly considered the material issue and the purpose of appointment of Advocate Commissioner and allowed the application in I.A.No.9699 of 2015 by following the principles laid down in various judgments of this Court and arrived at a correct conclusion. Hence, I do not find any reason to interfere with the said finding of the trial court. Further, the report of the Advocate Commissioner will enable the trial court to decide the aspect as regards the construction/improvement made by the defendant with or without consent of the landlord.

11. In view of the foregoing discussion, this court is of the view that the Revision Petition is liable to be dismissed as devoid of merits. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

05.01.2016

nvsri

To

1. The XVI Assistant Judge, City Civil Court, Chennai.
2. The Executive Officer
A/M.Gangadareswarar Temple
No.131, Gangadareswarar Koil St.,
Purasawalkam, Chennai 84

R.MALA,J.

nvsri

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